

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARY ANN PACHECO,

Plaintiff,

No. C 07-01276 JSW

v.

CITIBANK (SOUTH DAKOTA), N.A., as
successor to SEARS, ROEBUCK AND CO.,
dba SEARS/CBSD,

Defendant.

**NOTICE OF TENTATIVE
RULING AND QUESTIONS**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE
NOTICE OF THE FOLLOWING **TENTATIVE** RULING AND QUESTIONS FOR THE
HEARING SCHEDULED ON APRIL 20, 2007 AT 9:00 A.M.:

The Court has reviewed the parties' papers and, thus, does not wish to hear the parties
reargue matters addressed in those pleadings. If the parties intend to rely on authorities not
cited in their briefs, they are ORDERED to notify the Court and opposing counsel of these
authorities reasonably in advance of the hearing and to make copies available at the hearing. If
the parties submit such additional authorities, they are ORDERED to submit the citations to the
authorities only, without argument or additional briefing. *Cf.* N.D. Civil Local Rule 7-3(d).
The parties will be given the opportunity at oral argument to explain their reliance on such
authority.

The Court **tentatively GRANTS** Defendant's motion to dismiss. The Court finds that to
the extent Plaintiff alleges a claim under the Federal Debt Collection Practices Act ("FDCPA"),

1 15 U.S.C. §§ 1692b-1692j, such claim should be dismissed because Defendant is not a debt
2 collector under the FDCPA. The Court finds that Plaintiff's claim under the California
3 Rosenthal Fair Debt Collection Practices Act ("Rosenthal Act"), Cal. Civ. Code § 1788, *et seq.*
4 should be dismissed because it is preempted by the preempted by the Fair Credit Reporting Act,
5 15 U.S.C. § 1681, *et seq.* ("FCRA"). The purpose of this hearing is to determine whether the
6 dismissal should be with or without prejudice.

7 The parties shall each have 15 minutes to address the following questions:

- 8 (1) If given leave to amend, what claims if any would Plaintiff seek to bring and what facts
9 would she allege in support of such claims.
10 (2) Do the parties have anything further they wish to address?

11 **IT IS SO ORDERED.**

12
13 Dated: April 18, 2007



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE